IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 139 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAJESHBHAI ROHITBHAI MEHTA

Appearance:

Mr.Akil Qureshi, for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 10/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the Revenue, the following 2 questions have been referred to this Court under the provisions of Section 256(1) of the Income Tax Act, 1961 for our opinion:-

"1. Whether, the Tribunal has been right in law in directing the ITO to take into consideration the depreciation in the value of the shares of Sayaji Mills Ltd. at 108.75 while computing gain or loss arising on sale of shares of Rajesh Textiles Mills Ltd?.

3. Whether, the capital gain of the Rohit Family Trust is not chargeable to tax in the hands of the assessee who is one of the beneficiaries but is taxable in the hands of the trust?"

2. It has been very fairly submitted by Learned Advocate Shri Akil Qureshi that both the question have now been covered by the judgements delivered by this Court.

3. So far as the first question is concerned, it pertains to deduction of depreciation in value of shares of Sayaji Mills Ltd. which the assessee had suffered while computing capital gains earned by him by sale of shares of Rajesh Textile Mills Ltd. The assessee had received shares of Rajesh Taxtile Mills Ltd. as right shares on the basis of his holding of shares of Sayaji Mills Ltd. Upon issue of the right shares of Rajesh Textile Mills Ltd., value of shares of Sayaji Mills Ltd. had been substantially reduced and therefore loss was suffered by the assessee due to depreciation in value of the shares of Sayaji Mills Ltd. Following the judgment delivered in the case of Dhan Kapadia Vs. C.I.T. reported in 63 ITR Page 651, this Court has also held in ITR NO. 423/93, decided on 1.9.1998, that depreciation in value of the shares of the company is to be deducted from the capital gains. In the circumstances referred to hereinabove, we answer the first question in favour of the assessee and against the Revenue.

4. So far as the second question is concerned, it pertains to taxing the capital gains in the hands of Rohit Family Trust. In the case of Kum. Pallavi S Mayor Vs. C.I.T. (Guj) 127 ITR 201, it has been held by this Court that capital gains earned by the trustee are not to be taxed in the hands of the beneficiary. Following the said judgement, the second question is also answered in

favour of the assessee and against the Revenue.

5. Thus, both the questions are answered in favour of the assessee and against the Revenue. The reference thus stands disposed of with no orders as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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